

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DATE FILED: 1/18/13

JOSE MORENO and MOHAMED NAZIM KALIL,

Plaintiffs,

-v-

194 EAST SECOND STREET LLC,

Defendant.

10 Civ. 7458 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

In a conference held earlier today, defense counsel made an application for permission to depose Plaintiff Mohamed Nazim Kalil's wife before trial — notwithstanding the fact that discovery closed on January 20, 2012, and that the Court has ruled on Plaintiffs' motion for summary judgment. Defense counsel had made a similar application to the Honorable Richard J. Holwell, who was previously assigned to this case, by letters dated January 19 and 26, 2012 (the former of which is attached to this Order and the latter of which appears at Docket Entry No. 16), and orally to the undersigned at a conference on May 29, 2012 — all of which had been denied.

As stated during the conference today, defense counsel's application is DENIED again, as she did not submit evidence to show that the prospective witness's testimony would be relevant and non-duplicative and neglected to exercise due diligence prior to the discovery deadline of January 20, 2012. Indeed, by defense counsel's own admission, she made a strategic decision to wait until after Kalil's deposition on November 18, 2011, before seeking to depose Mrs. Kalil. Even then, she inexplicably waited until January 2012 — just weeks before the discovery deadline — to serve Mrs. Kalil with a subpoena and failed to bring the issue to the

Court's attention until January 19, 2012, the day before discovery was due to close. On top of all this, in December 2011, when defense counsel sought — and received — an extension of the discovery deadline to January 20, 2012, the Court expressly warned the parties that no further extensions would be granted. (Docket No. 14). For the foregoing reasons, defense counsel has failed to establish “good cause” for an extension of discovery under Rule 16(b) of the Federal Rules of Civil Procedure. *See, e.g., Grochowski v. Phoenix Const.*, 318 F.3d 80, 86 (2d Cir. 2003) (“A finding of good cause depends on the diligence of the moving party.”).

As stated during the conference today, the deadline for any opposition to any motion in limine or any pretrial memorandum is extended from **February 18, 2013**, to **February 19, 2013**.

SO ORDERED.

Dated: January 18, 2013
New York, New York

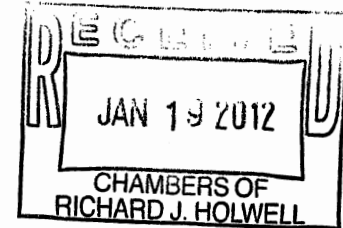


JESSE M. FURMAN
United States District Judge

ZETLIN DE CHIARA LLP

Counselors at Law

January 19, 2012



Via Facsimile Only (212) 805-7948

Hon. Richard J. Holwell
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

**Re: Jose Moreno and Mohammed Nazim Kalil. v. 194 East Second Street, LLC
Case No. 10 CV 7458 (RJH)**

Honorable Sir:

This firm is counsel to 194 East Second Street, LLC, the Defendant in the above action. We write to advise the Court of two issues that have arisen during the discovery process. The first involves the continued deposition of plaintiff Mohammed Nazim Kalil. Mr. Kalil was initially deposed on November 18, 2011. At the conclusion of Mr. Kalil's deposition, it was agreed by counsel that Mr. Kalil's deposition would be continued on another date for no more than two hours. Since that time, this firm has reached out multiple times to opposing counsel in an effort to schedule the remaining two hours of Mr. Kalil's deposition, without response. We bring this to the Court's attention at this time, after exhaustive efforts, due to the approaching discovery deadline of January 20, 2012.

Additionally, this firm has made repeated efforts to schedule the non-party deposition of Mr. Kalil's wife, Nalini Kalil, who has critical information relating to the controversy at hand. Plaintiffs' counsel refused our request to voluntarily produce Mrs. Kalil for a deposition. As a result, we attempted to serve Mrs. Kalil with a non-party subpoena at the beginning of this month. According to our process server, Mr. Kalil intercepted the attempted service of the subpoena, advising the server that he must first speak with his lawyer and providing the server with a telephone number to call to arrange for service. Multiple calls to that number, both by the server and our firm, have been unsuccessful in soliciting a response from Mrs. Kalil. Service was ultimately effected upon Mrs. Kalil on January 5, 2012 via "nail and mail" service. A copy of that affidavit of service is attached. Mrs. Kalil has not contacted this firm in response to the subpoena.

Further complicating matters, plaintiffs' counsel has advised on several occasions since Mrs. Kalil was served that she would be coming in to meet with plaintiffs' counsel and that his office would be in touch with us regarding her deposition. That has not yet occurred. Mr.

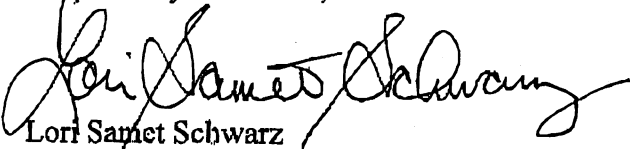
Hon. Richard J. Holwell
January 19, 2012
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Lanza has also intimated to the possibility that his firm will be representing Mrs. Kalil at her deposition, a factor that would impact our ability to contact her directly. Despite our best efforts, Mrs. Kalil's deposition remains unscheduled. As of late yesterday, we were still waiting to hear back from plaintiffs' counsel regarding representation and scheduling.

We wanted to bring these matters to the Court's attention prior to the close of discovery and respectfully request that they be addressed at the upcoming court conference on February 1, 2012. It is our hope that these two remaining depositions will be scheduled, and completed, before the court conference. However, if that is not the case, we ask that the Court set a date certain for Mr. and Mrs. Kalil to appear for their respective depositions so that discovery may come to a close.

Thank you for your consideration.

Respectfully submitted,



Lori Samet Schwarz

Encl.

cc: Craig Stuart Lanza, Esq. (*via email*)
Sean Quealy, Esq. (*via email*)